

directed to "an aerosol device." Additionally, Applicants respectfully submit that claim 29 is not directed to a composition, but is instead an independent claim directed to a "process for the production of a hair spray."

Applicants traverse the restriction requirement on the grounds that the Examiner has not shown that there would be a serious burden to examine the claims of Groups I and II together. Applicants respectfully submit that a search of the subject matter of Group II, in addition to the subject matter of Group I, would not be seriously burdensome. A search of the subject matter of Group II would appear to encompass the search of the subject matter of Group I because claim 28 recites an aerosol device as currently claimed in claim 1. Therefore, no serious burden would be caused by the Examiner examining all pending claims together.

Applicants also traverse the Restriction Requirement because the Examiner has failed to show that the groups contain distinct inventions, as required for a proper restriction. As noted by the Examiner at page 2 of the Restriction Requirement, inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. (MPEP § 806.05(h)). The Examiner states that the method (Group II) as claimed "can be practiced via acrylate hair mousse formulations." See October 5, 2001, Office Action at page 2. Therefore, the Examiner believes that Group I and Group II are distinct inventions.

Applicants respectfully submit that the Examiner's characterization of the method of Group II is incorrect. Claim 28 is directed to "[a] process for shaping or maintaining a

hairstyle, wherein said process comprises applying a hair styling composition . . . wherein said composition" is defined in the claim. In contrast to the Examiner's assertion, the method of Group II recites the use of a hair styling composition as defined by claim 28, rather than an acrylate hair mousse formulation as alleged by the Examiner.

The Examiner has therefore failed to set forth evidence that, as required by part (1) above, the process for using the product as claimed can be practiced with another materially different product. Because the Examiner has not set forth any evidence that the claims of Group I and Group II are distinct, Applicants respectfully request withdrawal of the Restriction Requirement.

In the event that the Examiner does not withdraw the Restriction Requirement, Applicants reserve the right to prosecute the non-elected claims in divisional or continuation applications. The Examiner is also reminded that, in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and when the withdrawn process depends from or otherwise includes all the limitations of an allowed product claim. (MPEP § 821.04).

Early and favorable action on the merits is respectfully requested. Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 5, 2001

By: 

Mark D. Sweet
Reg. No. 41,469